

<b>DIVISION OF MINED LAND RECLAMATION</b>		<b>PROCEDURE NO.</b>	4.1.02
<b>PROCEDURES MANUAL</b>		<b>ISSUE DATE</b>	May 28, 1998
<b>SUBJECT</b>	Realty Procedures	<b>Section</b>	AML
		<b>Last Revised</b>	

### **OBJECTIVE AND INTENT :**

To provide guidance and direction to the AML reclamation field staff in obtaining legal right of entry onto public and private property for the purpose of reclaiming abandoned mine lands.

### **GENERAL:**

§45.1-263.A of the **Code of Virginia** requires that the Director take all reasonable actions to obtain written consent from the owners of record prior to performing an inspection or conducting studies of an area which may be eligible for reclamation under the Abandoned Mine Reclamation Fund.

§4 VAC 25-130-877.11 of the **Virginia Coal Surface Mining Reclamation Regulations** states that written consent from the owner and lessee to the Division is the preferred means for obtaining agreements to enter lands in order to carry out reclamation activities. Nonconsensual entry by exercise of the Commonwealth's police powers would be undertaken only after reasonable efforts were taken to obtain written consent (see §4 VAC 25-130-877.13).

If an owner does not give the Division right of entry permission, the Director may exercise the agency's police powers under §§45.1-263.B.4 and 45.1-263.C to eliminate, control, or prevent the adverse effects that may be present from the abandoned mine land. The Division would proceed with legal access after posting the property as required by §4 VAC 25-130-877.13(c) of the regulations.

In determining the owner of an abandoned mine land site, the AML section may use the description found in county land records, tax maps, or abstracts of title. AML is not required to employ the metes and bounds method in determining property ownership.

The applicable AML forms and notices are: (Note: The forms used by the Division to obtain written right of entry consent must be approved by the Office of Surface Mining.)

**Consent for Right of Entry - Exploratory** (DMLR-AML-122) - Obtained from current property owners for the initiation of engineering or design studies, or for those who are unwilling to sign a Construction Consent for Right of Entry before project designs are finalized.

**Consent for Right of Entry - Ingress / Egress** (DMLR-AML-177) - Obtained from property owners whose property will be used only for access to areas for engineering or construction purposes. Also included are areas on which incidental construction must be performed (such as access roads).

**Consent for Right of Entry - Construction** (DMLR-AML-123) - Obtained from property owners:

- whose property will be used for borrow or disposal of materials, incidental to reclamation;
- prior to reclamation activities, when the property is exempt from a lien. (This also includes municipalities and governmental agencies.)
- prior to reclamation activities when the property is not exempted from a lien or when no lien waiver has been executed.
- prior to reclamation activities after a lien waiver has been executed.

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**Notice of Intent to Enter** (DMLR-AML-301) - Used when consent for right of entry is not obtainable, due to the property owner's refusal, unknown ownership, undivided heirships, landowners under the age of 18, or other extenuating circumstances. **These notices are non-consensual police power actions** and must be executed by the Division Director. The notices must be:

- a) sent by certified mail (return receipt requested) to the property owner(s);
- b) may be posted on the property; and/or
- c) may be published in a newspaper of local circulation.

The Division may use all 3 methods, depending upon which action(s) provide the most effective notice to the property owners involved. Entry by AML, or its agents, may be made 30 days after the property owner's receipt or refusal of notice, or the posting/publishing of the notice. **(No waiting period is required for emergency sites.)**

These are the different types of posted notice -

1. *Adverse Posting* - necessary when a property owner or entity will not sign a standard consent for right of entry or is not in favor of any work being performed on his or her property to eliminate the AML hazard(s) which would protect the public health and safety. This notice should be mailed to the property owner by certified mail and posted on the property in one or more highly visible locations.
2. *Friendly Posting* - the property owner or entity is not willing to sign the standard consent for right of entry for liability or other concerns (i.e., lien or title issues such as an heirship), but has no objection to the proposed reclamation work being performed. This notice should be sent by certified mail to the property owner(s) and posted on the property in one or more highly visible locations.
3. *Omnibus Posting* - used when the property owner is unknown, either through undivided heirships (numerous heirs), right of ways, easements, unrecorded leases, etc. This notice will be published in a newspaper of local circulation and posted on the project site in one or more highly visible locations. Normally, this notice is executed prior to the start of any exploratory drilling, construction, or other reclamation activity.

**Landowner Contact** (DMLR-AML-302) - Contains information about a property and its owner(s), including names, addresses, telephone numbers, property sketch, deed and tax information, possible lien issues (including documentation of landowner participation or non-participation in the mining), and records of all contacts with the property owner(s). A separate form should be completed for each property owner.

**Completion Memorandum** (DMLR-AML-303) - Used to notify Division staff that all realty activities for a project have been completed and includes a "Property Owner List", including any special conditions or features relative to the work on the property.

**Notice of Lien** (DMLR-AML-304) - As provided by §4 VAC 25-130-882.13 of the regulations, a lien may be placed upon a property for the amount of significant increase in the appraised fair market value of the land resulting from the AML reclamation.

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**Realty Analysis** (DMLR-AML-311) - Used to determine (1) if reclamation will primarily benefit the health, safety, and environmental values of the greater community; (2) if the reclamation is necessitated by an unforeseen occurrence; and (3) that no significant increase in property value will result from the reclamation.

**Lien Waiver** (DMLR-AML-305) - May be executed by the Division Director after obtaining a notarized real estate appraisal indicating no significant increase in property's fair market value due to AML reclamation, or the reclamation primarily benefited the local community. The waiver is recommended by the Inspector, concurred by the Area Supervisor and AML Manager, and approved by the Division Director. (Note: §4 VAC 25-130-882.13(a)(1-4) of the regulations)

## **PROCEDURES:**

### **Project Site Identification** -

Right of entry onto public or private real estate for abandoned mine land reclamation may commence after the Division receives project approval from the Office of Surface Mining. The boundaries and features of the project site will be determined using the scope of work developed for engineering by the Project Inspector. Generally, the Inspector initiating the project will perform the realty activities.

### **Determining Property Owners and Interest** -

Preliminary identification of the affected properties will be obtained by the Inspector. The Inspector will contact residents in the project area, recording the relevant information on the **Landowner Contact** form (DMLR-AML-302).

Besides obtaining property interest information from the residents, the Inspector should also contact landholding companies, mining companies, utilities, engineers, and local, state, and federal government offices.

The Inspector will visit the appropriate County/City Commissioner of Revenue office to obtain copies of tax maps and indices for the project area. (Note: Tax maps are useful tools in identifying possible property interests; however, they may not be entirely accurate or complete.)

The Inspector and Area Supervisor will determine, based upon the available property information, whether there is a need for external title search services. External title search services may be used when the property is subject to a title dispute, a lien process under §45.1-264 is likely, or when the project encompasses numerous properties.

In the event the Inspector and Area Supervisor determine that external title search services for current owner(s) of record are required, the initial information collected and a **Request for Title Search Services** (DMLR-AML-306) will be forwarded to the Contract Coordinator. The Contract Coordinator, working with the Area Supervisor and Inspector, will secure title search services, as needed.

In the instances where AML decides to conduct an internal title search, the Inspector will visit the County/City Circuit Court Clerk's office to ascertain title of each real estate interest which will or could

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be involved in the project. This involves searching title records for each property interest, whether the interest is fee simple, surface, mineral, leasehold or some other legal interest.

The Inspector should note that almost all ownership interests are recorded in the “Grantee” index of the Circuit Court Clerk’s office, although some are not (e.g., such as leases, wills, or rental agreements). The Inspector should compare the information obtained from the owner and the tax records with that of the Clerk’s records. If the information is consistent, the “Grantor” index must be searched to determine if the property interest has been conveyed to another, whether partially or entirely. Lease and easements should be searched when such may be affected by the project work. When a deed review indicates a potential problem with title, the Inspector and Area Supervisor need to review the information and agree on a proper course of action.

The Inspector will obtain a copy of the relevant deed, will, or other pertinent documentation for the current owner of record for inclusion in the project files. (Copies should be reduced to letter size.)

The Inspector shall also review the Circuit Court Clerk’s “Land Book” ledger (by magisterial district) to obtain addresses for property owners. From this and the other records obtained, the Inspector will prepare a **Property Owner List** (DMLR-AML-307).

#### **Lien Process -**

The Inspector must review the property interest information and prepare the **Lien Determination** form (DMLR-AML-308). The Inspector must consider and provide documentation of the owner’s participation in mining at the project site, as well as when he/she acquired the property. This information must be documented on the Landowner Contact form (DMLR-AML-302).

If a property is subject to a lien, the Inspector will evaluate the property to determine if the lien waiver provisions are applicable. If appropriate, the Inspector will prepare the **Realty Analysis** form (DMLR-AML-311) (this will eliminate unnecessary appraisals), and subsequently, the Lien Waiver form (DMLR-AML-305). If the lien waiver provisions are not applicable, the Inspector shall prepare the **Estates To Be Appraised** form (DMLR-AML-309), and shall forward it to the Area Supervisor.

The Area Supervisor will review the form and forward it to the Contract Coordinator, who will procure the services of an approved appraisal contractor.

The Inspector will perform the site showing with the appraisal contractor for each property subject to a lien.

Once the appraisal contractor submits the property appraisal(s), the Inspector will review each appraisal for form and completeness, and shall forward a completed **Review of Appraisal Report** form (DMLR-AML-310) to the Area Supervisor. The Inspector shall prepare the appropriate lien waivers (DMLR-AML-305), if applicable, based upon the appraisal, the realty analysis, and/or the costs of filing the lien exceeds the increase in the fair market value.

In the event of a significant property value increase, a lien will be filed in accordance with §45.1-264 and §4 VAC 25-130-882.13. The agency has determined that a significant increase in fair market value would be a differential of \$5,000.

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The Contract Coordinator shall receive, forward, and track all documentation pertaining to appraisals.

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### Consents for Entry -

The Inspector will obtain the appropriate right of entry in accordance with the information collected from landowner interviews, legal records, the proposed reclamation, and lien determinations. The Inspector will ensure the **Landowner Contact** forms (**DMLR-AML-302**) and correspondence concerning the project are updated through the life of the project (in order to maintain a chronological record of owner information and concerns), and made a part of the project's permanent record.

The Inspector will make reasonable attempts to contact all property owners - either in person, by telephone, or by certified mail. The Inspector shall retain the consents for entry until such time as the **Notice of Intent to Enter (DMLR-AML-301)** is prepared (prior to initiation of construction activities). The Inspector shall forward the consents to the Area Supervisor, who will obtain the AML Manager's signature and ensure placement of the documents in the project file. Executed copies of the consents for right of entry will be provided to the Inspector for return to the property owner(s).

The **Notice of Intent to Enter (DMLR-AML-301)** will be forwarded to the Area Supervisor, who will obtain the Division Director's signature on the notice and ensure it is published. The Inspector will receive copies of the signed Notice, and will place such on the project site (in one or more places conspicuous to the public).

### Surface Owners -

- **Consent for Right of Entry - Construction (DMLR-AML-123)** will be obtained from all owners affected by the abandoned mine land reclamation activities.
- **Consent for Right of Entry - Exploratory (DMLR-AML-122)** will be obtained when owners are not willing to sign the Consent for Right of Entry - Construction prior to the planning process.
- **Consent for Right of Entry - Ingress/Egress (DMLR-AML-177)** will be obtained in those situations where a property is needed to access properties for reclamation of AML features. (Property used for access only is not lienable and will not be posted, unless no other access is feasible.)

### Mineral Owners -

- **Consent for Right of Entry - Construction (DMLR-AML-123)** will be obtained from mineral owners only if it is determined that the mineral estate is being affected, or as determined necessary to complete the project objectives.

### REALTY FILES

All information relating to a project's realty functions will be incorporated into a file, including a **Completion Memorandum**. This file will be forwarded to the Area Supervisor for review and approval. Once approved, the Area Supervisor will place such with the project file. With the exception of emergency projects, the realty file must be complete before commencement of construction activities. The Contract Coordinator shall assist the Area Supervisor, as requested, with the handling and filing of all real estate documentation.

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The following items must be included in the project's realty file, if applicable:

- Project description, eligibility statement, and map.
- Consents for right of entry, including notices of intent to enter.
- Landowner contact forms (including documentation participation/non-participation in mining).
- Property owner list.
- County tax maps and indexes; property map.
- Deeds, wills, leases, or easements. (abstracts)
- Completion memorandum.
- Realty Analysis form
- Lien waiver form.
- Lien determination form.
- Notice of lien, when applicable.
- Estates to be appraised form.
- Appraisal documents, including the review of appraisal report form.
- Documentation and request for title search services, as necessary.
- All correspondence related to the realty activities.
- Any additional consents for right of entry, including documentation.